

CASE NO.  
CV02479610

D1 SPS

SUMMONS NO.  
2946154

Rule 4 (B) Ohio

Rules of Civil  
Procedure

## SUMMONS

ADVANCETEC, L.L.C.  
VS

PLAINTIFF

FACILITY PLANNING AND RESOURCES, INC.

DEFENDANT

FACILITY PLANNING AND RESOURCES INC  
1910 COCHRAN ROAD  
SUITE 615  
PITTSBURGH PA 15220-0000

You have been named defendant in a complaint (copy attached hereto) filed in Cuyahoga County Court of Common Pleas, Cuyahoga County Justice Center, Cleveland, Ohio 44113, by the plaintiff named herein.

You are hereby summoned and required to answer the complaint within 28 days after service of this summons upon you, exclusive of the day of service.

Said answer is required to be served on Plaintiff's Attorney (Address denoted by arrow at left.)

Your answer must also be filed with the court within 3 days after service of said answer on plaintiff's attorney.

If you fail to do so, judgment by default will be rendered against you for the relief demanded in the complaint.

Said answer is required to be served on:



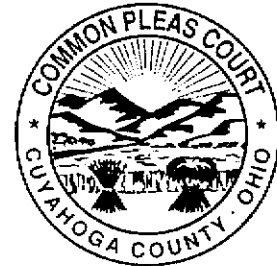
Plaintiff's Attorney

ELLEANOR H CHIN  
4900 KEY TOWER  
  
127 PUBLIC SQUARE  
CLEVELAND, OH 44114-1304

Case has been assigned to Judge:

ROBERT T GLICKMAN  
Do not contact judge. Judge's name is given for attorney's reference only.

GERALD E. FUERST  
Clerk of the Court of Common Pleas



DATE  
Aug 23, 2002

By

Deputy

COMPLAINT FILED 08/23/2002



FACILITY PLANNING AND RESOURCES INC  
1910 COCHRAN ROAD  
SUITE 615  
PITTSBURGH PA 15220-0000

FILED

2002 AUG 23 P 1:12

GERALD E. FLERS  
CLERK OF COURTS  
CUYAHOGA COUNTY

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY OHIO

\$ <u>100.00</u>	DEPOSITED
AUG 23 2002	
SECURE COSTS	
GERALD E. FLERS, Clerk of Courts	
PER <u>80</u>	DEPUTY

ADVANCETEC L.L.C.  
485 Southlake Blvd.  
Richmond, Virginia 23236

Plaintiff,

v.

FACILITY PLANNING  
AND RESOURCES, INC.  
1910 Cochran Road  
Suite 615  
Pittsburgh, Pennsylvania 15220

Defendant.

CASE NO

CV 02 479610 Complaint  
14215815

JUDGE



COMPLAINT

(JURY DEMAND  
ENDORSED HEREON)

CV02479610



14217882

NOW COMES Plaintiff AdvanceTEC L.L.C. ("AdvanceTEC"), by and through its undersigned counsel and states for its Complaint against Defendant Facility Planning and Resources, Inc. ("FPR") as follows:

INTRODUCTORY STATEMENT

1. This is an action by a design and building contractor to recover payment due it for expenses incurred during the construction and installation of a specialized facility for microelectronic research purposes at the National Aeronautics and Space Administration's Glenn Research Center ("NASA") in Brookpark, Ohio.

2. AdvanceTEC subcontracted with FPR to design certain components of and subsequently construct a facility, for which FPR had a primary contract with NASA as owner of the project, to design and construct. During the course of construction, originally scheduled to take sixteen (16) weeks, FPR repeatedly delayed or failed to make progress payments to AdvanceTEC and refused to include AdvanceTEC's full costs in contract modifications. Furthermore, despite agreeing to do so, FPR failed to obtain a payment bond to protect AdvanceTEC's right to payment.

3. AdvanceTEC is now owed over \$80,000. After repeated attempts to secure payment from FPR, and attempts to secure payment directly from NASA, AdvanceTEC is forced to seek relief from the Court in order to receive payment for the services it has rendered in good faith, constructing the facility at NASA, including installation of equipment, costs of labor, payments made to its own subcontractors, delay expenses and costs for additional work.

### **THE PARTIES**

4. Plaintiff AdvanceTEC is a Virginia limited liability company whose principal place of business is at 485 Southlake Blvd., Richmond, Virginia, 23236. AdvanceTEC is an engineering and design firm that designs and constructs specialized, environment-controlled facilities, known as "clean rooms" for clients in the biotechnology, semiconductor and pharmaceutical industries.

5. Upon information and belief, Defendant FPR is a Pennsylvania corporation whose principal place of business is at 1910 Cochran Road, Suite 615, Pittsburgh, Pennsylvania, 15220. FPR is an architectural firm specializing in clean room design.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the Defendant in this matter pursuant to Section 2307.382 of the Ohio Revised Code, as the parties have transacted business in Ohio and Defendant contracted to supply goods and services in the State of Ohio.

7. Venue is proper in this county as Plaintiff and Defendant are parties to a contract that was performed in Cuyahoga County.

### **STATEMENT OF THE FACTS**

8. Upon information and belief, on or about April 16, 2001 FPR entered into a contract (the "FPR-NASA Contract") with NASA to design and construct an approximately 1000-square foot clean room facility for microelectronic research purposes (hereinafter the "clean room") at the National Aeronautic and Space Administration's Glenn Research Center in Brookpark, Ohio.

9. On or about October 23, 2001, AdvanceTEC and FPR entered into a contract pursuant to which AdvanceTEC, who had previously provided consulting services on the clean room project would provide engineering design services to FPR relating to the climate control, contamination control and fire protection components of the clean room. See October 23, 2001 Agreement Between Design/Builder and Contractor, attached hereto at Exhibit A.

10. On or about January 9, 2002 AdvanceTEC and FPR agreed to amend the contract to provide for construction of the clean room by AdvanceTEC. See January 9, 2002 Letter from Thomas E. Hansz to Timothy Loughran, attached hereto as Exhibit B. (Hereinafter, the contract as amended referred to as "AdvanceTEC-FPR Contract").

11. AdvanceTEC commenced construction of the clean room at NASA's facilities in Brookpark, Ohio on or about January 28, 2002 and continued construction at the clean room site continuously until approximately April 29, 2002.

12. AdvanceTEC invoiced FPR for work performed, as provided by the agreement of the parties, but FPR's progress payments were insufficient to cover the balance outstanding on AdvanceTEC's invoices.

13. On or about April 25, 2002 FPR failed to make payment due on AdvanceTEC's March 2002 invoice, instead offering partial payment and a purported "promissory note".

14. On April 29, 2002 AdvanceTEC advised FPR that it required full payment of AdvanceTEC's March and April invoices and assurances of FPR's ability to pay, or AdvanceTEC would be compelled to cease its operations at the clean room site. See April 29, 2002 letter of Timothy Loughran to Thomas Hansz, attached hereto as Exhibit C.

15. FPR failed or refused to make full payment and provide assurances of its ability to pay and AdvanceTEC ceased construction activities at the clean room site on or about April 30, 2002 through May 3, 2002.

16. On or about May 8, 2002, after discussions between the parties and representatives of NASA, the parties entered into an written agreement, drafted by FPR, whereby FPR would obtain a payment bond to secure AdvanceTEC's right to be paid on the AdvanceTEC-FPR contract and FPR would pay costs of construction remobilization at the clean room site. See Handwritten Agreement between Thomas Hansz and Tim Loughran, attached hereto as Exhibit D ("May 2002 Agreement").

17. AdvanceTEC remobilized at the clean room site on or about May 3, 2002 and continued construction in good faith, relying on FPR's representation that it would secure a bond

protecting AdvanceTEC's right to be paid, and completed construction, leaving the site on or about June 7, 2002.

18. FPR failed to secure a payment bond, despite its obligation to do so and repeated requests from AdvanceTEC that FPR obtain the bond.

19. AdvanceTEC incurred both delay expenses and additional work charges before and after May 3, 2002, including costs resulting from changes in the scope of work performed and additional costs for its subcontractors. AdvanceTEC timely advised FPR of all additional changes and invoiced FPR accordingly.

20. FPR subsequently attempted to submit contract modifications to AdvanceTEC for the AdvanceTEC-FPR contract that failed to include delay expenses and additional work charges incurred by AdvanceTEC and thus failed to reflect AdvanceTEC's full contract value.

21. AdvanceTEC has failed to make modifications to the FPR-NASA contract to reflect AdvanceTEC's full contract value for delay expenses and additional work.

22. AdvanceTEC's full contract value is \$1,438,414.38, of which \$83,202.10 is outstanding.

23. NASA now holds payment in excess of \$100,000 due to FPR. On information and belief, the amount of FPR's obligations, including payments due on the AdvanceTEC-FPR contract, exceeds the amount due FPR.

24. AdvanceTEC has repeatedly requested payment of outstanding invoiced amounts from FPR, which FPR has refused to pay, despite its obligations to do so.

25. Despite FPR's willful failure to pay amounts owed to AdvanceTEC, AdvanceTEC continued to perform its contract obligations in good faith, including punchlist and warrantee items and has completed all clean room construction as of August 19, 2002.

**COUNT I**  
**(Breach of Contract for the AdvanceTEC-FPR Contract)**

26. AdvanceTEC reasserts and incorporates by reference the allegations in Paragraphs 1 through \_\_ as if fully rewritten herein.

27. The October 23, 2001 AdvanceTEC-FPR contract provides at that:

4.1.1 [FPR] shall pay [AdvanceTEC] in current funds for [AdvanceTEC's] performance of this Agreement, a Contract Sum in the amount to be determined through competitive Subcontractors' proposals subject to additions and deductions as provided in the Contract Documents. This price is associated with the cleanroom modifications and related construction work only[.]

4.1.2 Changes in project scope requirements shall be addressed and incorporated into the contract through a process reflective of the change order process outlined in the Owner-Design/Builder Contract.

28. AdvanceTEC designed mechanical, electrical, fire protection and high purity piping components of the clean room and subsequently constructed the clean room in accordance with the AdvanceTEC-FPR contract as subsequently modified by agreements of the parties, including but not limited to the January 9, 2002 amendment.

29. AdvanceTEC incurred additional costs for delays and changes in the scope of work, for which it timely invoiced FPR, in accordance with the parties' agreements.

30. AdvanceTEC has fully performed its obligations under the AdvanceTEC-FPR contract.

31. FPR has breached the AdvanceTEC-FPR contract by failing to pay invoices submitted by AdvanceTEC for work performed pursuant to the AdvanceTEC-FPR contract.

32. AdvanceTEC has made due demand for payment under the AdvanceTEC-FPR contract.

33. AdvanceTEC has been damaged in an amount not less than \$83,202.10, plus interest.

**COUNT II**  
**(Breach of Contract for the May, 2002 Agreement)**

34. AdvanceTEC reasserts and incorporates by reference the allegations in Paragraphs 1 through \_\_\_ as if fully rewritten herein.

35. In May 2002, FPR agreed to "secure a payment bond for AdvanceTEC's final payment."

36. AdvanceTEC resumed construction at the clean room site in reliance on FPR's agreed obligations in the May, 2002 Agreement.

37. FPR failed to obtain a payment bond securing AdvanceTEC's final payment for design and construction of the clean room.

38. AdvanceTEC is now due \$83,202.10 for work performed in designing and constructing the clean room.

39. AdvanceTEC has been damaged by FPR's failure to obtain a bond in an amount not less than \$83,202.10.

**COUNT III**  
**(Unjust Enrichment)**

40. AdvanceTEC reasserts and incorporates by reference the allegations in Paragraphs 1 through \_\_\_ as if fully rewritten herein.

41. AdvanceTEC designed mechanical, electrical, fire protection and high purity piping components of the clean room and subsequently constructed the clean room at the NASA facility in Brookpark, Ohio.



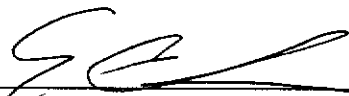
42. As a subcontractor to FPR under the FPR-NASA contract, AdvanceTEC has furnished services for which NASA now holds payment for FPR.

43. By virtue of FPR's receipt of the work and AdvanceTEC's services to FPR, FPR has been unjustly enriched in the amount of not less than \$83,202.10.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff AdvanceTEC hereby requests and prays for relief against Defendant FPR as follows:

- (a) That this Court enter judgment in favor of AdvanceTEC against Defendant FPR in the amount of not less than \$83,202.10, plus pre- and post-judgment interest.
- (b) That this Court award AdvanceTEC its attorneys' fees, expenses and such other relief as the Court may deem just and appropriate.


  
\_\_\_\_\_  
Eleanor H. Chin (0070721)

SQUIRE, SANDERS & DEMPSEY L.L.P.  
4900 Key Tower  
127 Public Square  
Cleveland, Ohio 44114  
(216) 479-8500

Attorneys for Plaintiff AdvanceTEC L.L.C.

**JURY DEMAND**

Plaintiff AdvanceTEC hereby demands a trial by jury on all issues stated in the above Complaint so triable.

  
\_\_\_\_\_  
One of the Attorneys for  
Plaintiff AdvanceTEC L.L.C.

A

## Agreement Between Design/Builder and Contractor

### AGREEMENT

made as of the twenty-third day of October in the year of Two Thousand and One.

**BETWEEN** the Design/Builder: Facility Planning & Resources, Inc.  
2101 Greentree Road  
Pittsburgh, PA 15220

and the Contractor: AdvanceTEC, LLC  
485 Southlake Boulevard  
Richmond, VA 23236

For the following Project: Design/Build Services for FY01 rehabilitation and  
modification to clean rooms Instrument Laboratory Building  
#77, NASA Glenn Research Center, Cleveland, Ohio.

The Owner is: National Aeronautics and Space Administration  
Glenn Research Center  
21000 Brookpark Road  
Cleveland, OH 44135

The Architect is: Facility Planning & Resources, Inc.  
2101 Greentree Road  
Pittsburgh, PA 15220

The Design/Builder and the Contractor agree as follows:

The Contractor is responsible for providing Mechanical, Fire Protection, Piping and Electrical Engineering design; pre-design construction evaluations and construction cost estimating, construction scheduling and construction phase services for this project. This work is based upon the requirements contained in Owner-Design/Builder Contract (NAS3-01149), dated April 16, 2001, attached by reference, and authorized under a Modification No. 3 dated 10 October 2001, attached as Exhibit No. 1, and future Modifications as issued by the Owner.

### ARTICLE 1 THE CONTRACT DOCUMENTS

#### 1.1 BASIC DEFINITIONS

- 1.1.1 The Contract Documents consist of this Agreement, the Drawings, Specifications and other documents identified in the Owner's Modification No. 03; the Owner's Summary of Work and Cleanroom specifications as issued prior to this agreement; and modifications and construction documents issued after execution of this Agreement and agreed to by the Owner, the Design/Builder and the Contractor.
- 1.1.2 A Modification is a written amendment to this Agreement signed by both parties; a Change Order authorized by the Owner; or a Construction Change Directive issued by the Design/Builder.
- 1.1.3 The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

**ARTICLE 2  
THE WORK OF THIS CONTRACT**

- 2.1 The Contractor shall provide those services set forth in this Agreement from the 35% level of completion, dated 17 July 2001, until completion of the construction and satisfactory certification by a third party testing company.
- 2.2 The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:
  - 2.1.1 Work provided under the Modification No. 2 (Exhibit No. 1) are for design and pre-construction services only.
  - 2.1.2 Other engineering and construction companies provided services provided from 01 May 2001 up to the completion of 35% design on 17 July 2001.
  - 2.1.3 The work scope clarifications enumerated in the Contractor's Scope Recap dated 21 August 2001 lists items that are included and excluded in the Contractor's general understanding of the Work to be provided. This Scope Recap is attached to this Agreement as Exhibit No. 2.

**ARTICLE 3  
DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

- 3.1 The date of commencement of the Work is 17 July 2001, which was designated in a verbal notice to proceed issued by the Design/Builder. Services provided by the Contractor previous to the date of this agreement are acknowledged and are a part of this Work.
- 3.2 The Contractor shall achieve Substantial Completion of the entire Work not later than 30, May 2001, subject to adjustments of this Contract Time as provided in the Contract Documents, and approved by the Owner.

**ARTICLE 4  
CONTRACT SUM**

- 4.1 **FIXED PRICE**
  - 4.1.1 Design/Builder shall pay the Contractor in current funds for the Contractor's performance of this Agreement, a Contract Sum in the amount to be determined through competitive Subcontractors' proposals subject to additions and deductions as provided in the Contract Documents. This price is associated with the cleanroom modifications and related construction work only
  - 4.1.2 Changes in project scope requirements shall be addressed and incorporated into the contract through a process reflective of the change order process outlined in the Owner-Design/Builder Contract.

**ARTICLE 5  
ACCOUNTING RECORDS**

- 5.1 The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Part 2 Agreement, the accounting and control systems shall be satisfactory to the Design/Builder. The Design/Builder and the Design/Builder's accountants shall be afforded access to the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers,

memoranda and other data relating to this Agreement, and the Contractor shall preserve those for a period of three (3) years after final payment, or for such longer period as may be required by law.

#### ARTICLE 6 PROGRESS PAYMENTS

- 6.1 Based upon Applications for Payment submitted to the Design/Builder by the Contractor and Certificates for Payment issued by the Design/Builder, the Design/Builder shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.
- 6.2 The period covered by each Application for Payment shall be one (1) calendar month ending on the last day of the month.
- 6.3 Provided an Application for Payment is received by the Design/Builder not later than the Twenty-Fifth (25<sup>th</sup>) day of a month, the Design/Builder shall make payment to the Contractor not later than the Thirtieth (30<sup>th</sup>) day of the following month. If an application for payment is received by the Design/Builder after the application date fixed above, payment shall be made by the Design/Builder not later than Forty-Five (45) days after the Design/Builder receives the Application for Payment.
- 6.4 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents.
- 6.5 Application for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment.

#### ARTICLE 7 FINAL PAYMENT

- 7.1 Final payment shall be made by the Design/Builder to the Contractor when this Agreement has been fully performed by the Contractor, and approved by the Owner, except for the Contractor's responsibility to correct defective or nonconforming Work and final acceptance of the work has been acknowledged by the Owner. Such final payment shall be made by the Design/Builder not more than 30 days after the Owner's acceptance of the work.

#### ARTICLE 8 MISCELLANEOUS PROVISIONS

- 8.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.
- 8.2 25% Self Performed Work Requirement: The Owner has a requirement that 25% of the project work be performed by the Contractor's own forces. Due to the nature of this project, the Contractor will not be required to perform the specified 25% of the work with its own forces.
- 8.3 Insurance Requirements: Contractor shall provide evidence of appropriate insurance to the Design/Builder and the Owner. The Design/Builder will be listed as an Additional Insured on the policy.
- 8.4 No building permits are required.

- 8.5 Performance and Payment Bonds are to be provided by Contractor's Subcontractors.
- 8.6 Certified Payrolls are required.
- 8.7 The Owner has a policy of 8% for minority and women-owned businesses participation to be achieved on projects. Because of the nature of this project the Owner is aware that this goal may not be achieved. The Contractor shall, however, be cognizant of the Owner's goal and work towards that end where possible.

#### ARTICLE 9 TERMINATION OR SUSPENSION

- 9.1 If the Agreement between the Owner and the Design/Builder is terminated, the Design/Builder may terminate this Agreement without cause.
- 9.2 The Contractor as provided in the General Conditions, AIA 201 document, may terminate this Agreement.
- 9.3 This Agreement may be terminated by the Design/Builder for cause; however, the amount, if any, to be paid to the Contractor under the General Conditions shall not exceed the amount the previously approved by the Owner.

#### ARTICLE 10 ENUMERATION OF CONTRACT DOCUMENTS

- 10.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows

Document	Title
CF176560	Cover Sheet and Index
<b>Demolition</b>	
CF176561	Architectural Demolition Plan (by Architect)
CF176562	Mechanical & Electrical Demolition Plan (by Contractor)
<b>Architectural (by Architect)</b>	
CF176563	Cleanroom Floor Plan
CF176564	Cleanroom Reflected Ceiling Plan
CF176565	Building Section
CF176566	Roof Plan
CF176567	Roof Details
CF176568	Building Elevations (used under a previous Contract)
CF176569	Finish / Opening Schedule
CF176570	Second Floor Plan
CF176571	Cleanroom Sections
<b>Structural (by Architect)</b>	
CF176572	Cleanroom Roof Framing Plan

**Mechanical (by Contractor)**

CF176573 HVAC - Legend and Symbols  
 CF176574 HVAC - Air Flow Diagram  
 CF176575 HVAC - Reflected Ceiling Plan (Not Used @ 65% Submittal)  
 CF176576 HVAC - Interstitial Plan  
 CF176577 HVAC - Roof Plan  
 CF176578 HVAC - Section  
 CF176579 HVAC - Chilled Water Flow Diagram  
 CF176580 HVAC - Steam & Condensate Flow Diagram  
 CF176581 HVAC - Schedules

**High Purity Piping (by Contractor)**

CF176582 RM 219 Equipment & Piping Plan  
 CF176583 Third Floor Process Piping Plan  
 CF176584 Not used @ 65% Submittal

**Fire Protection (by Contractor)**

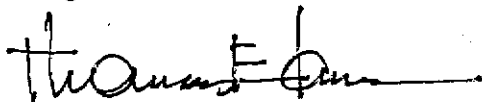
CF176585 Not used @ 65% Submittal  
 CF176586 Not used @ 65% Submittal

**Electrical (by Contractor)**


CF176587 General Notes & Specifications  
 CF176588 Electrical Panel Schedules  
 CF176589 Electrical Receptacle Plan  
 CF176590 Cleanroom Lighting Plan  
 CF176591 Electrical One Line Diagram  
 CF176592 Cleanroom FFU Wiring Plan  
 CF176593 Electrical Room - Partial Plan  
 CF176594 HVAC Roof Plan - Electrical Power  
 CF176595 Not Used @ 65% Submittal  
 CF176596 Not Used @ 65% Submittal  
 CF176597 Not Used @ 65% Submittal  
 CF176598 Not Used @ 65% Submittal  
 CF176599 Not Used @ 65% Submittal

- 10.2 The specifications are those Architectural and Structural Specifications prepared by the Architect and the Mechanical, Electrical, Fire Protection, High Purity Piping and Electrical Specifications prepared by the Contractor and dated 23 October 2001.

This Agreement is entered into as of the day and year first written above and is executed in at least three (2) original copies of which one is to be delivered to the Contractor, and one to the Design/Builder.

**Design/Builder:**


Thomas E. Hansz, AIA, President  
 Facility Planning & Resources, Inc.

**Contractor:**


Timothy Loughran, President  
 AdvanceTEC, LLC

**B**



09 January 2002

Timothy Loughran  
AdvanceTEC LLC  
485 Southlake Blvd.  
Richmond, VA 23236

Re: NASA Building 77 Cleanroom NAS3-01149  
Glenn Research Center Cleveland, OH

Dear Tim:

Attached is a copy of Exhibit 3, which modifies the agreement between AdvanceTEC and FPR, dated 23 October 2001. Exhibit 3 is comprised of Modification Number Four (04) to the original agreement between NASA and FPR. This modification increases our contract amount and authorizes us to proceed with construction of the cleanroom.

Accordingly, the agreement between AdvanceTEC and FPR is modified.

Article 4, Contract Sum, is modified to read as follows:

4.1.3 Based upon both NASA's and FPR's approvals of the Construction Documents, and bids received from Subcontractors, the Fixed price of this work shall be One Million Two Hundred Seventy-Nine Thousand One Hundred Seventy-Five dollars, (\$1,279,175.00)

FACILITY  
PLANNING &  
RESOURCES

4.1.3.1	Construction and Certification Services	\$1,180,775.00
4.1.3.2	Mechanical & Electrical Engineering	\$85,000.00
4.1.3.3	Cost Estimating Services	\$13,400.00

1,279,175<sup>00</sup>

Article 10, Enumeration of Contract Documents, is modified as follows:

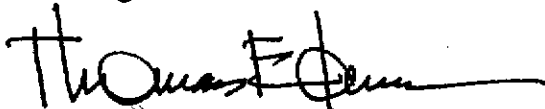
10.3 The list of Drawings and the List of Specifications are according to Exhibit 3 of this agreement.

Modification Four allows for the completion of construction and successful certification by 31 May 2002.

Please sign both copies of this letter, signifying your agreement to the modifications to our contract. Return one signed copy and the attached Exhibit 3 to this office.

The Pre-Construction Meeting, along with the Client Meetings that preceded and followed, went very well. Our Client is extremely pleased with the work to date and especially with the Pre-Construction Meeting.

Best regards,



Thomas E. Hansz, AIA, President  
Facility Planning & Resources, Inc.



Timothy Loughran, President  
AdvanceTEC, LLC

TEH/pm

attachment

2101 Greentree Road  
Pittsburgh, PA 15220

412 278 8000

fax:  
412 278 3771

www.fprinc.com

**EXHIBIT 3**

**MODIFICATION NUMBER FOUR**

NASA Contract No. NAS3-01149

08 January 2002

<b>AMENDMENT OF SOLICITATION/Modification of CONTRACT</b>		TRACT ID CODE NAS3-01149		PAGE 1 of 05	
2. AMENDMENT/MODIFICATION NO. Modification Number Four (04)		3. EFFECTIVE DATE 08/JAN/02		4. REQUISITION/PURCHASE NO. <b>SEE BLOCK 7 BELOW</b>	
5. PROJECT NO. (If applicable) Final Design		7. ADMINISTERED BY (If other than Item 6) 183072[c] / 192658[c] / 192720[p]		CODE	
6. ISSUED BY NASA Glenn Research Center Construction & Services Branch M.S. 50-3 21000 Brookpark Road Cleveland, OH 44135-3191		CODE 0616/Lupson		CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and Zip Code)  Facility Planning & Resources 2101 Greentree Road Pittsburgh, PA 15220		(KX)(37)		<input type="checkbox"/> 9A. AMENDMENT OF SOLICITATION NO. <input type="checkbox"/> 9B. DATED (SEE ITEM 11) <input checked="" type="checkbox"/> 10A. MODIFICATION OF CONTRACT/ORDER NO. NAS3-01149 <input checked="" type="checkbox"/> 10B. DATED (SEE ITEM 13) 16/Apr/01	
CODE		FACILITY CODE			

## 11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning \_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. **FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER.** If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

1. ACCOUNTING AND APPROPRIATION DATA (If required) 9760-9901-400-22-9-38-00-3212 4000 Obligate: \$5,000.00

4897-2000-400-22-1-37-00-3213 4000 Obligate: \$1,294,668.00

Total Obligation: \$1,299,668.00


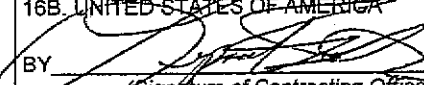
## 13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

<input type="checkbox"/>	A	THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
<input type="checkbox"/>	B	THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
X	C	THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: Federal Acquisition Regulations (FAR) clauses 52.233-1 entitled "Disputes", 52.243-4 entitled "Changes" and mutual agreement
<input type="checkbox"/>	D	OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is required to sign this document and return ONE copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

(SEE ATTACHED PAGES)

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.			
15a. NAME AND TITLE OF SIGNER (Type or print) THOMAS E. HANSZ President		15a. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Lupson, Erick N. / Contracting Officer	
15B. CONTRACTOR/OFFEROR BY  (Signature of person authorized to sign)	15C. DATE SIGNED 08 JAN 2002	16B. UNITED STATES OF AMERICA BY  (Signature of Contracting Officer)	16C. DATE SIGNED 08/JAN/02

Modification Number Four (04)

**WHEREAS,** The Government has directed or requested certain changes in the contract specifications be made through contract change orders or request for proposal(s), and the Contractor has submitted the appropriate proposals or claims for the additional work requested; and

**WHEREAS,** The Parties hereto have negotiated and agreed to an equitable adjustment in the contract firm fixed price amount;

**NOW THEREFORE,** In consideration of the premises and of the obligations herein set forth, the parties hereto do mutually agree as follows:

" Proposal/RFP/RFI/CO's:

The Contractor's proposals dated December 18, 2001 is hereby incorporated by reference and made a part hereof. The proposal for the construction of the clean room at \$1,299,668.00.

**TOTAL FIXED PRICE**

**\$1,299,668.00"**

The Total Contract Fixed Price Amount is increased \$1,299,668.00 from \$484,618.00 to **\$1,784,286.00**.

The Period Of Performance is extended to May 15, 2002. *TEH*  
*May 31, 2002*

The Parties hereto acknowledge and agree that any and all claims for equitable adjustment of the contract price and time pursuant to the provisions of the clause(s) 52.243-04 entitled "ACHANGES", and 52.233-01 entitled "DISPUTES" and Mutual Agreement are hereby fully satisfied and discharged with respect to this Supplemental Agreement Number Four (04).

[END OF MODIFICATION]

## LIST OF DRAWINGS

	CF176560	Cover Sheet and Index
DEMOLITION	CF176561	Architectural Demolition Plan
	CF176562	Mechanical, Electrical & Piping Demolition Plan
	CF176563	Fire Protection Demolition Plan
ARCHITECTURAL	CF176564	Cleanroom Floor Plan
	CF176565	Cleanroom Reflected Ceiling Plan
	CF176566	Building Section
	CF176567	Roof Plan
	CF176568	Finish & Opening Schedules
	CF176569	Cleanroom Details
	CF176570	Cleanroom Sections
STRUCTURAL	CF176571	Roof Framing Plan
MECHANICAL	CF176572	HVAC - Legend and Symbols
	CF176573	HVAC - Air Flow Diagram
	CF176574	HVAC - Sequence of Operations & Controls
	CF176575	HVAC - Interstitial Plan
	CF176576	HVAC - Mechanical Roof Plan
	CF176577	HVAC - Mechanical Sections
	CF176578	HVAC - Chilled Water Flow Diagram
	CF176579	HVAC - Steam & Condensate Flow Diagram
	CF176580	HVAC - Schedules
HIGH PURITY PIPING	CF176581	Process Piping P&ID
	CF176582	Cleanroom Piping Plan
	CF176583	Process Piping Sections
	CF176584	Process Piping Sections
FIRE PROTECTION	CF176585	Fire Protection Plan
ELECTRICAL	CF176586	Electrical Legend & Symbols
	CF176587	Electrical Panel Schedules
	CF176588	Electrical Receptacle Plan
	CF176589	Lighting Plan
	CF176590	Electrical One Line Diagram
	CF176591	Cleanroom FFU Wiring Plan
	CF176592	Electrical Room - Partial Plan
	CF176593	Electrical Roof Plan

Drawings CF176594 through CF1765949 are either used for the Roof Replacement work or are not used at this time.

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RESOURCES

## LIST OF SPECIFICATION SECTIONS

**DIVISION 1**

01100 Summary of Work  
 01120 List of Drawings  
 01180 Cleanroom Construction Protocol  
 01732 Selective Demolition

**DIVISION 2**

02085 Asbestos Abatement  
 02090 Removal of Lead Base Paint

**DIVISION 4**

04810 Unit Masonry Assemblies

**DIVISION 5**

05500 Metal Fabrication

**DIVISION 7**

07270 Fire Stopping  
 07720 Root Curbs  
 07920 Joint Sealants

**DIVISION 8**

08110 Doors and Frames  
 08460 Automatic Cleanroom Doors  
 08710 Door Hardware  
 08800 Glazing

**DIVISION 9**

09511 Acoustical Panel Ceilings  
 09652 Sheet Vinyl Flooring & Base  
 09800 Epoxy Flooring  
 09900 Painting

**DIVISION 10**

10522 Fire Extinguishers and Cabinets

**DIVISION 13**

13009 Cleanroom Testing & Certification  
 13030 Cleanroom Ceiling Grid  
 13521 Cleanroom Wall and Ceiling Panels  
 13550 Fan Filter Units

**DIVISION 15**

15023 Codes and Standards  
 15050 Basic Mechanical Materials and Methods  
 15060 Hangers and Supports  
 15064 High Purity Process Piping Systems  
 15066 High Purity Stainless Steel Tubing Systems  
 15075 Mechanical Identification  
 15083 Pipe Insulation  
 15100 Valves  
 15122 Meters and Gauges  
 15181 Hydronic Piping  
 15185 Hydronic Pumps  
 15815 Metal Ducts  
 15820 Duct Accessories  
 15837 Centrifugal Fans  
 15894 Metal Process Exhaust Ductwork  
 15895 FRP Ductwork  
 15990 HVAC Testing, Adjusting, Balancing

**DIVISION 16**

16010 Electrical General Provisions  
 16110 Raceways and Fittings  
 16120 Wire and Cable (600 Volt Maximum)  
 16131 Pull and Junction Boxes  
 16134 Switch and Outlet Boxes  
 16140 Wiring Devices  
 16150 Motors and Appliances  
 16190 Supporting Devices  
 16440 Safety Switches  
 16450 Grounding  
 16462 Distribution "K-Type" Transformers for Non-Linear Loads  
 16470 Panelboards  
 16475 Molded Case Circuit Breakers  
 16480 Motor Starters  
 16510 Lighting Systems  
 16760 Inter-communications System

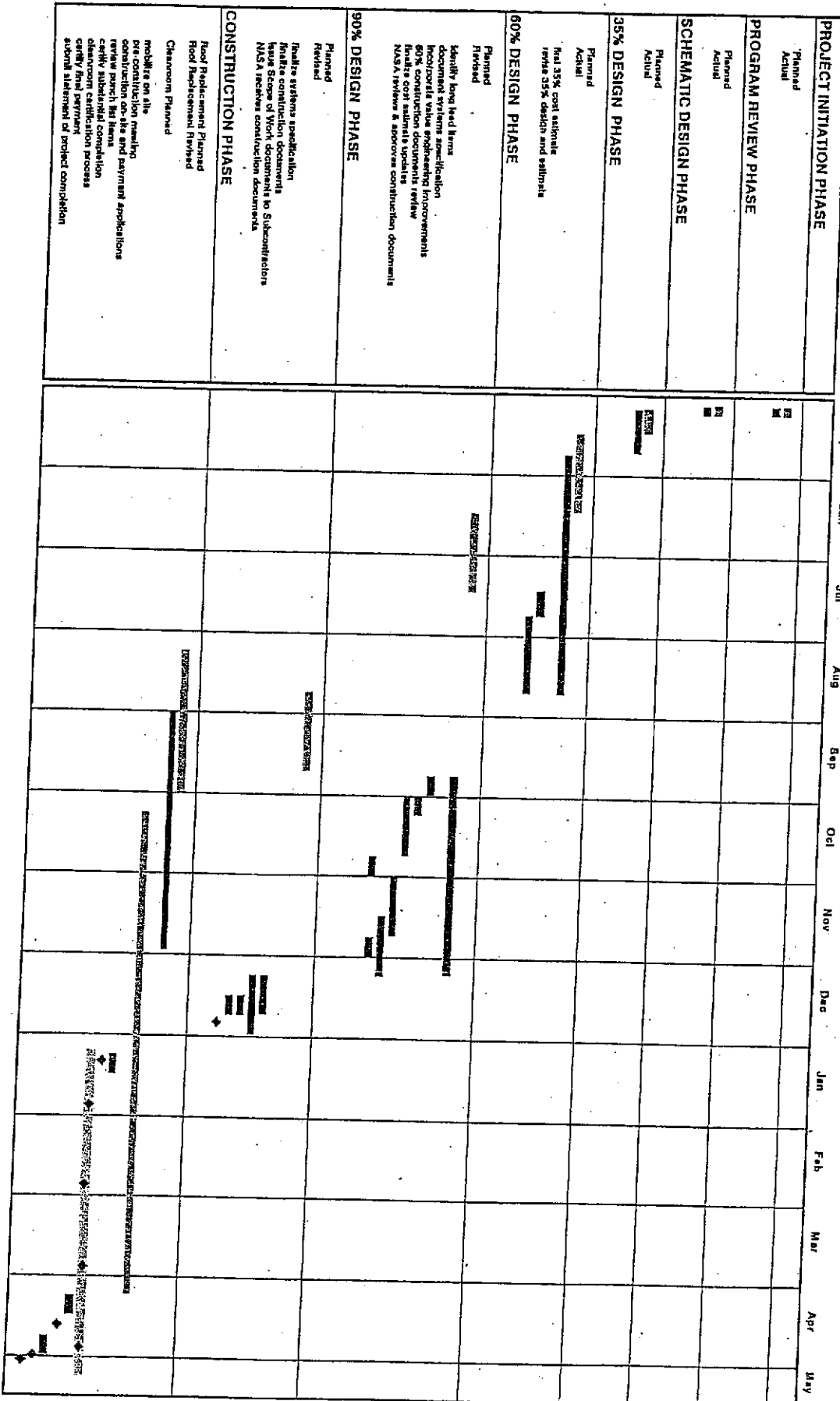
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# PROJECT SCHEDULE

activity

14 December 2001



**C**





**FILE COPY**

29 April 2002

Thomas Hansz  
Facility Planning and Resources, Inc.  
1910 Cochran Rd.  
Suite 615  
Pittsburgh, PA 15220

**Ref: AdvanceTEC Project No. 2018  
NASA Building 77 Cleanroom Project  
NASA Contract No. NAS3-01149**

Dear Tom,

AdvanceTEC is in receipt of your Check No. 3970 in the amount of \$417,839.15, for payment against invoice No. 2018-7, in the amount of \$502,494.70. Please be advised that your partial payment cannot be accepted as payment for funds due, and AdvanceTEC has no option but to stop construction (effective Friday 4/26/02) until such time as the outstanding balance is brought current, and an alternate method for payment guarantee can be reached for future payments due. We are forced to take this action for the following reasons:

1. We are not being paid in accordance with Article 6 of the contract document.
2. Payment of our March invoice has deducted funds for work that was in place at the time of invoicing, and that NASA had approved change orders for. FPR's failure to submit an appropriate invoice to NASA is not AdvanceTEC's responsibility.
3. AdvanceTEC cannot accept a "Promissory Note" in the amount of \$33,500.00 as payment for funds past due on our March invoice. FPR's pledge of proceeds from the NASA contract, does not leave our organization with any security of payment, as that amount, in all likelihood, exceeds the funds due FPR (less subcontractor and supplier payments). More importantly, it leaves AdvanceTEC with no lien rights.
4. FPR's lack of \$33,000.00 in working capital, mutually agreed contractually due AdvanceTEC, severely undermines AdvanceTEC's confidence in your cash flow going forward, and in our ability to close out payment in a timely fashion.
5. FPR does not have a 100% payment bond or letter of credit in place to insure AdvanceTEC payment.

In order to proceed further with work AdvanceTEC must have written assurances from FPR and NASA guaranteeing payment for the following:

1. Our outstanding balance for our March invoice, in the amount of \$84,655.55



# AdvanceTEC

Advanced Technology, Engineering & Construction

2. Our April invoice in the amount of \$369,122.73
3. Our balance to complete, in the approximate amount of \$158,389.25
4. Cost incurred by AdvanceTEC and subcontractors for remobilization due to stopping work.

We regret we have been put in this position but we feel we have no option but to protect our financial position and responsibility to our subcontractors and bonding agent. Please contact me if you have questions regarding our position. We await your formal response as to how to proceed.

Sincerely,

Tim Loughran  
Managing Partner  
AdvanceTEC, LLC

Cc: Eric Lupson- NASA Contracting Officer via fax 216-433-8000  
John Burton - AdvanceTEC  
Michael Marchione - AdvanceTEC  
2018- Project file  
ENC: FPR Correspondence Dated 4/25/02  
FPR Promissory Note Dated 4/26/02

**D**

FAX

Case: 1:02-cv-01839-JMM Doc #: 1-1 Filed: 09/19/02 28 of 28. PageID #: 31

TO: ALICIA  
FROM: TOM

ALICIA: PLEASE TYPE THE FOLLOWING ON A MEMO FORM, DATED TUES. 07  
& SEND TO TIM LOUGHRAN W/ COPIES TO JOE SAGGIO, FRAN BORATO  
AND ERICK LUPSON. SEND VIA E-MAIL, WITH INSERT.

TIM:

THE FOLLOWING ITEMS WERE AGREED TO IN OUR TELEPHONE CONVERSATION  
TUESDAY AFTERNOON FOLLOWING THE OWNER'S MEETING. NASA HAS  
REQUESTED THAT WE BOTH SIGN THIS MEMO SIGNIFYING OUR MUTUAL  
AGREEMENT. PLEASE RETURN A SIGNED COPY AND I WILL SIGN IT AND  
FORWARD COPIES ON TO NASA AND TO YOU,

- FPR WILL SECURE A PAYMENT BOND FOR ADVANCE TEC'S FINAL  
PAYMENT.
- FPR WILL PAY FOR MUTUALLY AGREED UPON REMOBILIZATION  
CHARGES.
- ERICK LUPSON WILL APPROVE PAYMENT REQUEST 07, DATED 29 APRIL  
2002, IMMEDIATELY FOLLOWING OUR MEETING.
- UPON RECEIVING NOTIFICATION OF THE PAYMENT DATE FOR  
PAYMENT REQUEST 07, ERICK LUPSON WILL NOTIFY BOTH  
ADVANCE TEC AND FPR.
- ~~THE~~ UPON RECEIVING <sup>NOTIFICATION OF</sup> THE PAYMENT DATE, FPR WILL ISSUE  
A CHECK TO ADVANCE TEC FOR THE OUTSTANDING AMOUNT  
OF THE MARCH INVOICE AND THE AMOUNT OF THE APRIL INVOICE. THE  
CHECK WILL BE SENT TO ADVANCE TEC BY OVERNIGHT DELIVERY.

  
THOMAS HANSZ

  
TIM LOUGHRAN